

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
ALABAMA POWER COMPANY,)	
)	
a subsidiary of the)	
Southern Company,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against the Defendant pursuant to Sections 113 and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413 and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions, 42

U.S.C. §§ 7470-92, and for violations of the State Implementation Plan ("SIP") approved under the Act for the state of Alabama ("Alabama SIP"). Defendant modified, and thereafter operated, the following coal-fired electric generating power plants: Barry in Mobile County, Gaston in Shelby County, Gorgas in Walker County, Greene County in Greene County, and Miller in Jefferson County, Alabama, without installing the appropriate pollution control technology to control emissions of nitrogen oxides ("NOx"), sulfur dioxide ("SO₂"), and particulate matter ("PM") and, with respect to all but one of the foregoing plants, without first obtaining appropriate permits authorizing the construction, as the Act requires.

2. As a result of Defendant's operation of the power plants following these unlawful modifications and the absence of appropriate controls, massive amounts of SO₂, NOx, and PM have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from these plants.

3. Defendant's violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe

environmental problems facing the nation today. An order of this Court directing the Defendant, forthwith, to install and operate the pollution control technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States filed by the United States, will produce an immediate and dramatic improvement in the quality of air breathed by millions of Americans downwind of the these plants. Such an order, in conjunction with others sought in other jurisdictions, will reduce illness, improve visibility, and protect national parks, wilderness areas, forests, lakes, and streams from further degradation due to the fallout from acid precipitation, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

4. Sulfur dioxide, NO_x, and PM when emitted into the air can have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual SO₂ emissions and 30 percent of NO_x emissions in the United States. Sulfur dioxide interacts in the atmosphere to form sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can

be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and according to recent studies, higher levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

5. Nitrogen oxides have numerous adverse effects on health and welfare. Nitrogen oxides react with other pollutants and sunlight to form ground-level ozone, which scientists have long recognized as being harmful to human health and causing environmental damage. Ozone causes decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. In addition, ozone cause damages vegetation. Nitrogen dioxide ("NO₂"), one type of NO_x, is a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune

system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure.

6. Sulfur dioxide and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet, "acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it damages trees at high elevations. Acid precipitation accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. Sulfur dioxide and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with the original complaint, the United States intends to reduce dramatically, the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States in this action is

imposed, and in others filed concurrent with the original complaint, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country including several national parks and wilderness areas. Stress to our forests from Maine to Florida will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

7. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of PM. Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. Particulate matter can also make the effects of acid precipitation worse, reducing visibility and damaging man-made

materials. Reductions in PM illegally released into the atmosphere by the Defendant and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action and the defendant pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

9. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Defendant resides in this District, has its principal places of business in this district, violations occurred and are occurring in this District, and four of the five facilities at issue are located in this District.

NOTICES

10. On November 3, 1999, EPA issued a Notice of Violation to Defendant for violations of the Act and the Alabama SIP. Pursuant to 42 U.S.C. §§ 7413(a)(1) and (b)(1), EPA provided a copies of the Notice of Violation to the State of Alabama.

11. The 30-day period established in 42 U.S.C. § 7413, between issuance of the Notice of Violation and commencement of a civil action, has elapsed.

12. The United States is providing notice of the commencement of this action to the State of Alabama as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANT

13. Defendant Alabama Power Company ("Alabama Power" or "Defendant"), is a wholly owned subsidiary of The Southern Company ("Southern"), a Delaware corporation with headquarters in Atlanta, Georgia, and doing business in the state of Alabama. Defendant is an operating affiliate of Southern.

14. Defendant is an Alabama corporation and does business within the state by, among other things, operating electric generating facilities in Alabama and by providing electric capacity and energy to a shared Southern system which is distributed within the states of Alabama, Georgia, Florida, and Mississippi.

15. At all times relevant to this Complaint, Defendant owned and operated Plant Barry, a coal fired electric generation plant in Mobile County, Alabama. Plant Barry

generates electricity from five steam generating boilers which are designated as Plant Barry Units 1 through 5.

16. At all times relevant to this Complaint, Defendant and its Operating Affiliate, Georgia Power Company, through SEGCO, owned Plant E.C. Gaston ("Plant Gaston"), a coal fired electric generation plant in Shelby County, Alabama. At all times relevant to this Complaint, Defendant operated Plant Gaston. Plant Gaston generates electricity from five steam generating boilers which are designated as Plant Gaston Units 1 through 5.

17. At all times relevant to this Complaint, Defendant owned and operated Plant Gorgas, a coal fired electric generation plant in Walker County, Alabama. Plant Gorgas generates electricity from five steam generating boilers which are designated as Plant Gorgas Units 6 through 10.

18. At all times relevant to this Complaint, Defendant, with its Operating Affiliate, Mississippi Power Company, owned Plant Greene County, an electric generation plant in Greene County, Alabama. At all times relevant to this Complaint, Defendant operated Plant Greene County. Plant Greene County generates electricity from ten steam generating boilers, two of which are coal fired units designated as Plant Greene

County Units 1 and 2.

19. At all times relevant to this Complaint, Defendant owned and operated Plant James H. Miller, Jr. ("Plant Miller"), a coal fired electric generation plant in Jefferson County, Alabama. Plant Miller generates electricity from four steam generating boilers which are designated as Plant Miller Units 1 through 4.

20. The Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

21. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

22. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42

U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for NO_x, SO₂, PM (now measured in the ambient air as PM-10), and ozone as such pollutants. 40 C.F.R. §§ 50.4 - 50.11.

23. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

24. At times relevant to this complaint Plants Barry, Gorgas and Greene County were located in areas that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO₂, SO₂, PM-10, and PM.

25. At times relevant to this complaint, Gaston and Miller were located in areas that had been classified attainment or unclassifiable for NO₂, SO₂, PM-10, and PM and as

nonattainment for Ozone.

The Prevention of Significant Deterioration Requirements

26. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

27. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility install and operate the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section

169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units ("BTUs") per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities." Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

28. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt State Implementation Plans ("SIPs") that contain emission limitations and such other measures to prevent significant deterioration of air quality in attainment areas.

29. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved as part of its SIP by EPA.

30. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

31. As set forth at 40 C.F.R. § 52.21(i), construction of any major stationary source or major modification in an area designated as attainment or unclassifiable requires a PSD permit prior to that construction.

32. Under EPA's PSD regulations, a "major stationary source" is defined to include a fossil-fuel fired steam electric plant of more than 250 million BTUs per hour heat input which emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).

33. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.

34. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase of the following pollutants, at a rate of emissions that would

equal or exceed any of the following: for SO₂, 40 tons per year; for NO_x, 40 tons per year; and for PM, 25 tons per year. "Net emissions increase" means "the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions [as defined by 40 C.F.R. § 52.21(b)(21)] at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

35. As set forth at 40 C.F.R. § 52.21(j), a source with a major modification in an attainment area must install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase.

36. As set forth at 40 C.F.R. § 52.21(k), the PSD program requires a person who wishes to modify a major source in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air

quality standard or any specified incremental amount.

37. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area.

38. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a proposed modification must submit all information necessary to make any analysis or make any determination required under 40 C.F.R. § 52.21.

39. As set forth in 40 C.F.R. § 52.21(o), the owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation resulting from the source or modification.

General Permitting Requirements

40. Under Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), each SIP must include a program to regulate the modification and construction of any stationary source of air pollution, regardless of whether the source is defined as "major," in both attainment and nonattainment areas of the state as necessary to assure that NAAQS are achieved.

STATE OF ALABAMA REGULATORY PROVISIONS

PSD Permitting

41. The Alabama PSD program is part of the Alabama SIP

and was originally approved by EPA on November 10, 1981, 46 Fed. Reg. 55517, as Alabama Air Pollution Control Commission Rules and Regulations, Chapter 16.4 (hereafter "Rule 16.4"). Effective June 22, 1989, 55 Fed. Reg. 38994, Alabama's PSD program was recodified at the Alabama Department of Environmental Management ("ADEM") Code Chapter 335-3-14 (hereafter "Rule 335-3-14").

42. At all relevant times, the Alabama SIP has prohibited the construction, major modification, or operation of a major stationary source in any area in Alabama which has been designated "attainment" or "unclassifiable" unless a PSD permit has been obtained and the other requirements of the Alabama SIP have been satisfied. Rules 16.1 and 16.4; Rules 335-3-14-.01 (General Provisions) and 335-3-14-.04(8) (Air Permits Authorizing Construction in Clean Air Areas).

43. At all relevant times, the Alabama SIP defined "major stationary source" to include any fossil-fuel fired steam electric plant of 250 million British thermal units (BTUs) per hour heat input which emits or has the potential to emit, 100 tons per year or more of any regulated air pollutant, or any physical change that would occur at a stationary source not otherwise qualifying as a major

stationary source, if the change would constitute a major stationary source by itself. Rule 16.4.2(a)(1); Rule 335-3-14-.04(2)(a)(1).

44. At all relevant times, the Alabama SIP defined "major modification" to mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Rule 16.4.2.(b)(1); Rule 335-3-14-.04(2)(b)(1).

45. At all relevant times, the Alabama SIP required that sources with modifications subject to PSD review apply the best available control technology ("BACT") for each pollutant subject to regulation for which the modification would result in a significant net emissions increase. Rule 16.4.9; Rule 335-3-14-.04(9).

46. At all relevant times, the Alabama SIP required that sources with modifications subject to PSD regulations comply with other requirements of the Alabama SIP, including but not limited to:

a. a person who wishes to modify a major source subject to PSD review must demonstrate, before construction commences, that construction of the facility will not cause or

contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount. Rule 16.4.10; Rule 335-3-14-.04(10);

b. any application for a PSD permit must be accompanied by an analysis of ambient air quality in the area. Rule 16.4.12; Rule 335-3-14-.04(12);

c. the owner or operator of a proposed modification must submit all information necessary to make any analysis or make any necessary determination. Rule 16.4.13; Rule 335-3-14-.04(13); and

d. the owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation resulting from the source or modification. Rule 16.4.14; Rule 335-3-14-.04(14).

General Permitting Requirements

47. Alabama's general air permitting requirements are currently promulgated at ADEM Rule 335-3-14-.01. This rule was originally promulgated as Rule 1.12 and approved by EPA as part of the Alabama SIP on May 31, 1972. 37 Fed. Reg.10842. Through subsequent revisions, the rule was recodified to Alabama Air Pollution Control Commission Chapter 16, Rule 16.1 and the Alabama SIP revision approved November 26, 1979. 44

Fed. Reg. 67375. Through subsequent revisions, Rule 16.1 was recodified, effective June 22, 1989, 55 Fed. Reg. 38994, at Rule 335-3-14-.01.

48. Rule 335-3-14-.01 (formerly Rule 16.1) provides that any person building, erecting, altering or replacing any article, machine, equipment or other contrivance which may cause the issuance of air contaminants shall apply for an Air Permit at least 10 days prior to construction. This rule further provides that an Air Permit shall be obtained before any such article, machine, equipment or other contrivance may be operated or used.

49. Rule 335-3-14-.02 (formerly Chapter 16.2) requires that every application for an Air Permit shall contain all the information necessary to enable the Director to make the determination required by Rule 335-3-14-.03.

ENFORCEMENT PROVISIONS

50. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the

date on which such notice of a violation is issued,
the Administrator may . . .

* * *

(C) bring a civil action in accordance with
subsection (b) of this section.

51. Section 113(a)(3) of the Act, 42 U.S.C. §
7413(a)(3), provides that "[e]xcept for a requirement or
prohibition enforceable under the preceding provisions of this
subsection, whenever, on the basis of any information
available to the Administrator, the Administrator finds that
any person has violated, or is in violation of, any other
requirement or prohibition of this subchapter . . . the
Administrator may . . . bring a civil action in accordance with
subsection (b) of this section"

52. Section 113(b)(1) of the Act, 42 U.S.C. §
7413(b)(1), and 40 C.F.R. § 52.23, authorize the Administrator
to initiate a judicial enforcement action for a permanent or
temporary injunction, and/or for a civil penalty of up to
\$25,000 per day of violation for violations occurring on or
before January 30, 1997 and \$27,500 per day for each such
violation occurring after January 30, 1997, pursuant to the
Federal Civil Penalties Inflation Adjustment Act of 1990, 28
U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any
person whenever such person has violated, or is in violation

of, any requirement or prohibition of an applicable implementation plan or permit.

53. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

54. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

55. At all times pertinent to this civil action, Plants Barry, Gaston, Gorgas, Greene County, and Miller were each a

"major emitting facility" and a "major stationary source" within the meaning of the Act and the Alabama SIP for NOx, SO₂, PM-10, and PM.

56. Any owner or operator who constructs or operates a source or modification subject to 40 C.F.R. Part 52 regulations who commences construction after the effective date of those regulations without applying for and receiving approval thereunder, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r).

57. Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23, upon EPA approval, SIP requirements are federally enforceable under Section 113. 40 C.F.R. § 52.23.

FIRST CLAIM FOR RELIEF
(PSD Violations at Plant Barry)

58. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

59. At various times, Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Barry. These modifications included, but are not limited to: (1) installation of a new design spiral fin economizer in Unit 5 in 1993; (2) installation of new primary superheater top and intermediate bundle in Unit 1 in 1994;

and, (3) installation of a new reheater section in Unit 2 in 1997. Defendant constructed additional major modifications to Plant Barry other than those described in this paragraph.

60. Defendant did not obtain a PSD permit as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) prior to constructing or operating the major modifications at Plant Barry identified in paragraph 59. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Barry. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Barry identified in paragraph 59. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

61. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Barry. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

62. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the

violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF

(Alabama SIP General Permit Violations at Plant Barry)

63. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

64. Defendant failed to obtain a permit to construct or operate the modifications at Plant Barry identified in paragraph 59 as required by Rule 335-3-14-.01.

65. Defendant violated and continues to violate the Act and the Alabama SIP at Plant Barry. Unless restrained by an order of this Court, these and similar violations of the Act and the Alabama SIP will continue.

66. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b) and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the

Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

THIRD CLAIM FOR RELIEF
(PSD Violations at Plant Gaston)

67. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

68. At various times, Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Gaston. These major modifications included, but are not limited to: replacement of the front reheater for Unit 5 in 1991. Defendant constructed additional major modifications to Plant Gaston other than those described in this paragraph.

69. Defendant did not obtain a PSD permit as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) prior to constructing or operating the major modifications at Plant Gaston identified in paragraph 68. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Gaston. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Gaston identified in

paragraph 68. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

70. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Gaston. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

71. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FOURTH CLAIM FOR RELIEF

(Alabama SIP General Permit Violations at Plant Gaston)

72. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

73. Defendant failed to obtain a permit to construct or operate the modifications at Plant Gaston identified in paragraph 68 as required by Rule 335-3-14-.01.

74. Defendant has violated and continues to violate the

Act and the Alabama SIP at Plant Gaston. Unless restrained by an order of this Court, these and similar violations of the Act and the Alabama SIP will continue.

75. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

FIFTH CLAIM FOR RELIEF
(PSD Violations at Plant Gorgas)

76. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

77. At various times, Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Gorgas. These major "modifications" included, but are not limited to: (1) a balance draft conversion of Unit 10 in 1985; (2) installation of a new design spiral fin economizer in Unit 10 in 1994; and, (3) installation of redesigned air heaters in Unit 10 in 1994. Defendant constructed additional major modifications to Plant Gorgas

other than those described in this paragraph.

78. Defendant did not obtain a PSD permit as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) prior to constructing or operating the major modifications at Plant Gorgas identified in paragraph 77. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Gorgas. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Gorgas identified in paragraph 77. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

79. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Gorgas. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

80. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each

violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SIXTH CLAIM FOR RELIEF

(Alabama SIP General Permit Violations at Plant Gorgas)

81. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

82. Defendant failed to obtain a permit to construct or operate the modifications at Plant Gorgas identified in paragraph 77 as required by Rule 335-3-14-.01.

83. Defendant has violated and continues to violate the Act and the Alabama SIP at Plant Gorgas. Unless restrained by an order of this Court, these and similar violations of the Act and the Alabama SIP will continue.

84. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SEVENTH CLAIM FOR RELIEF
(PSD Violations at Plant Greene County)

85. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

86. At various times, Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Greene County. These "major modifications" included, but are not limited to: replacement of the primary reheater for Unit 2 in 1989. Defendant constructed additional major modifications to Plant Greene County other than those described in this paragraph.

87. Defendant did not obtain a PSD permit as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) prior to constructing or operating the major modifications at Plant Greene County identified in paragraph 86. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Greene County. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Greene County identified in paragraph 86. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

88. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Greene County. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

89. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

EIGHTH CLAIM FOR RELIEF

(Alabama SIP General Permit Violations at Plant Greene County)

90. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

91. Defendant failed to obtain a permit to construct or operate the modifications at Plant Greene County identified in paragraph 86 as required by Rule 335-3-14-.01.

92. Defendant has violated and continues to violate the Act and the Alabama SIP at Plant Greene County. Unless restrained by an order of this Court, these and similar

violations of the Act and the Alabama SIP will continue.

93. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

NINTH CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Miller Unit 3)

94. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

95. Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Miller. These "major modifications" included, but are not limited to: construction of Miller Unit 3 on or after June 1, 1975. Defendant did not, as required by the CAA and the Alabama SIP, undertake a continuous program of construction at Unit 3, or failed to complete construction of Unit 3 within a reasonable time, subjecting Unit 3 to the PSD provisions of the CAA and the Alabama SIP as a new major modification upon resumption of construction activities after June 1, 1975.

Defendant constructed additional major modifications to Plant Miller other than those described in this paragraph.

96. Defendant did not obtain a PSD permit as required by Section 165 of the Act, 42 U.S.C. § 7475, or, following November 10, 1981, Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04), prior to constructing or operating the major modifications at Plant Miller identified in paragraph 95. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Section 165 of the Act, 42 U.S.C. § 7475 or Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Miller. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Miller identified in paragraph 95. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

97. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Miller. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

98. As provided in Section 113(b) of the Act, 42 U.S.C.

§ 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

TENTH CLAIM FOR RELIEF

(PSD Violations: Construction at Plant Miller Unit 4)

99. Paragraphs 1 through 57 are realleged and incorporated herein by reference.

100. Defendant commenced construction of major modifications, as defined in the Act and the Alabama SIP, at Plant Miller. These "major modifications" included, but are not limited to: construction of Miller Unit 4 on or after June 1, 1975. Defendant did not, as required by the CAA and the Alabama SIP, undertake a continuous program of construction at Unit 4, or failed to complete construction of Unit 4 within a reasonable time, subjecting Unit 4 to the PSD provisions of the CAA and the Alabama SIP as a new major modification upon resumption of construction activities after June 1, 1975. Defendant constructed additional major modifications to Plant Miller other than those described in this paragraph.

101. Defendant did not obtain a PSD permit as required by Section 165 of the Act, 42 U.S.C. § 7475, or, following November 10, 1981, Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04), prior to constructing or operating the major modifications at Plant Miller identified in paragraph 100. Defendant has not installed and operated BACT for control of NO_x, SO₂, and PM, as applicable, as required by Section 165 of the Act, 42 U.S.C. § 7475 or Rule 16.4 of the Alabama SIP (currently Rule 335-3-14-.04) at Plant Miller. In addition, Defendant did not comply with Alabama SIP Rules 16.1, 16.4.09, .10, .12, .13, or .14 prior to construction or operation of any of the major modifications of Plant Miller identified in paragraph 100. (Rules 335-3-14-.01 and 335-3-14-.04(9, 10, 12, 13, 14)).

102. Defendant has violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and Rule 16.4 of the Alabama SIP at Plant Miller. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

103. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive

relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 103 above, the United States of America requests that this Court:

1. Permanently enjoin Defendant from operating Plants Barry, Gaston, Gorgas, Greene County, and Miller, including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

2. Order Defendant to remedy its violations by, among other things, requiring it to install, as appropriate, the best available control technology or the lowest achievable emission rate technology, on the plants that it owns or operates for each pollutant subject to regulation under the Clean Air Act;

3. Order Defendant to apply for permits for Plants Barry, Gaston, Gorgas, Greene County and Miller that are in

conformity with the requirements of the PSD provisions of the Act and the Alabama SIP, and the general permit provisions of the Alabama SIP;

4. Order Defendant to conduct audits of all of its operations to determine whether any other modifications have occurred that would require it to meet the requirements of PSD, nonattainment New Source Review, 42 U.S.C. §§ 7501-7515, the Alabama SIP general permit requirements, or the Alabama SIP, and report the results of the audits to the United States;

5. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

6. Assess a civil penalty against Defendant of up to \$25,000 per day for each violation of the Clean Air Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

7. Award Plaintiff its costs of this action; and

8. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division

DAVID ROSSKAM
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-3974

G. DOUGLAS JONES
United States Attorney

By:

JOHN CHARLES BELL
Assistant United States Attorney
200 Robert S. Vance Federal Building
& Courthouse.
1800 5th Ave. N., Rm. 200
Birmingham, Alabama 35203-2198
(205) 244-2001